

**In the Court of Rajeev Bhardwaj, Special Judge, Shimla,
H.P.**

CIS CNR No. HPSH100036482020
CIS Case Type Bail application.
CIS Registration No. 415/2020
Bail Application No. 198-S/22 of 2020
Date of Institution: 24.11.2020
Date of Decision: 08.12.2020

Khushpreet Singh son of Sh. Paramjeet Singh, aged 25 years,
R/O House No. 63, Chandroop Nagar Post Office Babyal,
Police Station Mahesh Nagar, Tehsil & District Ambala,
Haryana, (Presently in judicial custody).

...Bail applicant/accused.

Versus

State of Himachal Pradesh.

..... Respondent.

**Bail applications under Section 439 of the
Cr. P. C. in FIR No. 275/2020, dated
17.11.2020 under Section 21 of ND & PS
Act, registered with Police Station Dhalli,
District, Shimla H.P.**

For the bail applicant: Sh. Rajan Kahol, Advocate.

For the respondent: Sh. Sudhir Sharma, Id. P.P.

ORDER:

This order will dispose of an application under
Section 439 of Cr. P. C. filed by the bail-applicant/accused for

the grant of bail.

2. Brief facts, necessary to dispose of the bail application are that on 06.11.2020, a police party comprising H.C. Vijay Kumar No. 49 and Constable Vineet No. 939 went in official vehicle bearing registration No. HP-63B-2146 being driven by Home Guard Vikas Sawant No. 2/3-25 on patrolling and checking towards Dhalli Chowk, Kufri etc. and at about 5:00 P.M. when they were present at Hussein Vally, H.C. Manoj No.195, Constable Rajiv Patial No. 699 and HHC Surinder No. 1188 met them and they were associated in conducting the search of the vehicles etc. When they were checking the vehicles, a vehicle bearing registration No. HR-85D-4071 came from Kufri side and it was stopped. When the police asked him to produce the documents, he failed and he also seemed to be perplexed. In the meanwhile, Rahul who was walking on the road was associated in conducting the search of the vehicle. During search, one small plastic packet was found in the dash-board, which contained three small packets. There was some brown colour substance in those three small packets, which on the basis of experience and smelling was chitta. The total weight of the said chitta was 28.68 grams. Consequently, the FIR has been registered against the bail-applicant.

3. The present application has been moved by the bail-applicant under Section 439 Cr. P. C. for the grant of bail on the grounds that the bail-applicant is an innocent person and he has been falsely implicated in the present case. The investigation is complete and his custody is no more required

by the police. He has given undertaking that he will not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and further he has also given undertaking that he will abide by all the terms and conditions as imposed by this Court, if granted bail.

4. The police has opposed the prayer of the bail-applicant/accused interalia on the grounds that in case he is released on bail, he may threaten the witnesses and affect the investigation of the case. The motive of the bail-applicant was to sell the chitta and it was purchased by him for ₹ 48,000/-. Therefore, the acts and conduct of the bail applicant clearly show that he may again indulge in such type of nefarious activities and spoil the life of students, young generation etc.

5. Arguments heard. I have also gone through the case file.

6. It is settled law that bail is not only a matter of right, but only a privilege to be granted at the discretion of the Court. The discretion is to be exercised objectively and not subjectively with a view to strike a balance between individual's right of personal freedom and the investigational rights of the police.

7. The quantity allegedly recovered from the possession of the bail-applicant is 28.68 grams of chitta, which is more than small quantity and less than commercial quantity. Thus, bar of Section 37 of the ND& PS Act is not attracted. Reference can also be made to the decisions of our Hon'ble High Court in **Surjan Vs. State of H.P. Latest HLJ 2002 (H.P.)**

934 and Ved Ram Vs. state of Himachal Pradesh 2007(1) Shim. L.C. 152, Raj Kamal Vs. state of Himachal Pradesh, Cr. MP(M) No. 1371 of 2018, Decided on 24.10.2018, Pawan Dixit Vs. State of Himachal Pradesh Cr.MP (M) No. 1570 of 2017, Decided on January 2, 2018 and Pawan Kumar Vs. State of H.P. Cr. MP (M) No.1776 of 2018 Decided on 28.12.2018.

8. The bail-applicant is a young person of 25 years of age and putting him in the jail with other criminals will only make him hardened criminals instead of reforming and bringing him in the main stream. When the crime is of serious nature and there is possibility of the accused tampering with the evidence or fleeing from justice, there is justification for sending the accused to judicial custody. However, in the present case, there is no such apprehension and putting the bail-applicant behind the bar will mar his career and it also amount to predetermination of the guilt without trial. The grounds taken by the police to deny the bail are not substantiated by record.

9. Thus, no case is made out to deny bail to the bail-applicant. After taking into consideration all the facts of the case, nature and gravity of the offence and the ratio of above decisions of Hon'ble High Court, I think that the applicant/ accused deserves to be released on bail subject to furnishing personal bond in the sum of ₹ 2,00,000/- (rupees two lacs) with two sureties each of the like amount to the satisfaction of the learned Addl. Chief Judicial Magistrate, Court No.1, Shimla/ Illaqua Magistrate stationed at Shimla. However, release of the

bail applicant is subject to the following conditions:-

- i) That the bail applicant shall make himself available for interrogation as and when called by the investigating officer in this case.
- ii) That the bail applicant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with facts of case so as to dissuade him/her from disclosing such facts to Court or to any police officer.
- iii) That the bail applicant shall not leave the country without the prior permission of the investigating officer or the Court.
- iv) The bail applicant shall attend the trial on each date, unless exempted.
- v) In case of non-appearance on the intimated date, then irrespective of the contents of the bail bonds, the bail applicant undertake to pay all the expenditure (only the principal amount without interest), that the State might incur to produce him before such Court, provided such amount exceeds the amount recoverable after forfeiture of the bail bonds, subject to the provisions of Sections 446 & 446-A of Cr. P. C. The failure of the petitioner to reimburse the State shall entitle the trial

Court to order transfer of money from the bank account(s) of the petitioner. However, this recovery is subject to the condition that the expenditure incurred must be only to trace the bail applicant and relates to the exercise undertaken solely to nab the bail applicant in that FIR, and during that voyage, the Police had not gone for any other purpose/function what so ever.

- vi) In case the bail applicant commit any fresh offence during the bail, then they shall intimate the SHO of the present police station, with all the details of the present and the new FIR, within thirty days of the knowledge of such fresh FIR. In such a situation, it shall be open for the State, if it deems fit and proper, to apply for cancellation of this bail.
- vii) The bail applicant shall surrender all firearms along with ammunitions, if any, and the arms license to the concerned authority within 30 days from today.
- viii) The bail applicant shall inform the SHO about the place of residence during trial. The bail applicant shall intimate about the change of residential address, within two weeks from such change, to the police station, and after

filing of the Police report also to the trial Court.

ix In case of violation of any of the conditions as stipulated in this order, the State/Public Prosecutor may file an application for cancellation of bail of the bail applicants.

10. The police is at liberty to move this Court for cancellation of this order, in case, any of the above condition is found violated.

11. The observations so made, herein above, are confined to the disposal of the present bail application and same shall have no bearing on the merits of the case. One copy of this order be sent to the learned Chief Judicial Magistrate, Shimla for necessary action. File of this Court, be consigned to the record room, after due completion.

Announced and signed in the open Court today this 8th day of December, 2020.

Sd/-

(Rajeev Bhardwaj)
Special Judge, Shimla, H.P.

*PS